MONTANA LEGISLATIVE HISTORY

Chapter 226 19 93

Bill H 279 S _____ Original bill & history X C

H. Committee on BUSINESS & ECON. DEV.			S. Committee on TAXATION		
Hearing Date(s) & EXEC ACTION	2/4	X C	Hearing Date(s) & EXEC. ACTION	3/16	X C
		C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 277 INTRODUCED BY GERVAIS, ET AL.

APPROPRIATE MONEY TO COMMISSIONER OF HIGHER EDUCATION TO FUND AMERICAN INDIAN/MINORITY ACHIEVEMENT

1/19	INTRODUCED		
1/20	REFERRED TO APPROPRIATIONS		
1/20	FIRST READING		
1/26	HEARING		
2/09	TABLED IN COMMITTEE		

HB 278 INTRODUCED BY BARDANOUVE, ET AL.

GENERALLY REVISE DISTRICT COURT CRIMINAL REIMBURSEMENT PROGRAM

1/19	INTRODUCED		
1/20	REFERRED TO APPROPRIATIONS		
1/20	FIRST READING		
1/20	FISCAL NOTE REQUESTED		
1/26	FISCAL NOTE RECEIVED		
1/29	FISCAL NOTE PRINTED		
2/05	HEARING		
3/03	COMMITTEE REPORT—BILL PASSED		
3/05	2ND READING PASSED	75	25
3/08	3RD READING PASSED	81	15
	TRANSMITTED TO SENATE		
3/10	FIRST READING		
3/10	REFERRED TO JUDICIARY		
3/22	HEARING		
3/27	COMMITTEE REPORT—BILL CONCURRED		
3/31	2ND READING CONCURRED	49	0
4/01	3RD READING CONCURRED	47	1
	RETURNED TO HOUSE		
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/08	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 330		
	EFFECTIVE DATE: 04/13/93		

HB 279 INTRODUCED BY GILBERT, ET AL.

ESTABLISH REQUIREMENTS FOR LIQUOR AGENCY STORE FRANCHISE AGREEMENTS

1/19	INTRODUCED		
1/20	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/20	FIRST READING		
1/20	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		
1/25	FISCAL NOTE PRINTED		
2/04	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/10	2ND READING PASSED	93	2
2/13	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
2/16	FIRST READING		
2/16	REFERRED TO TAXATION		
3/16	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/17	2ND READING CONCURRED	49	0
3/18	3RD READING CONCURRED	49	0

	RETURNED TO HOUSE		
3/24	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 228		
	EFFECTIVE DATE: 03/30/93		

HB 280 INTRODUCED BY GILBERT, ET AL.

GENERALLY REVISE MONTANA SUBDIVISION AND PLATTING ACT

1/19	INTRODUCED		
1/20	REFERRED TO NATURAL RESOURCES		
1/20	FIRST READING		
1/21	FISCAL NOTE REQUESTED		
1/28	FISCAL NOTE RECEIVED		
1/29	FISCAL NOTE PRINTED		
2/03	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED AS AMENDED	79	21
2/19	3RD READING PASSED	68	29
	TRANSMITTED TO SENATE		
2/22	FIRST READING		
2/22	REFERRED TO NATURAL RESOURCES		
3/19	HEARING		
3/30	TABLED IN COMMITTEE		
3/31	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	21	29

HB 281 INTRODUCED BY GRADY, ET AL.

GENERALLY REVISE SNOWMOBILE LAWS

1/19	INTRODUCED		
1/20	REFERRED TO FISH & GAME		
1/20	FIRST READING		
1/20	FISCAL NOTE REQUESTED		
1/27	FISCAL NOTE RECEIVED		
1/28	HEARING		
1/29	FISCAL NOTE PRINTED		
2/04	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	55	44
2/10	3RD READING PASSED	74	24
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/02	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	48	0
3/12	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	74	24
4/02	3RD READING AMENDMENTS CONCURRED	82	17
4/07	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 351		
	EFFECTIVE DATE: 04/16/93		

LC 0349/01

HOUSE BILL NO. 279

INTRODUCED BY Dillon Harrington Foster McCaffree Swysgood HARP

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING REQUIREMENTS FOR LIQUOR AGENCY STORE FRANCHISE AGREEMENTS; PROVIDING PROCEDURES FOR AGENCY FRANCHISE AGREEMENT TERMINATION; AMENDING SECTIONS 16-1-106, 16-2-101, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. **Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Beer importer" means a person other than a brewer who imports malt beverages.

(6) "Brewer" means a person who produces malt beverages.

(7) "Department" means the department of revenue.

(8) "Immediate family" means a spouse, dependent children, or dependent parents.

(9) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(10) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(11) "Liquor" means an alcoholic beverage except beer and table wine.

(12) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared ~~therefrom~~ from carbohydrates and with or without other wholesome products suitable for human food consumption.

(13) "Package" means a container or receptacle used for holding an alcoholic beverage.

(14) "Posted price" means the retail price of liquor and table wine as fixed and determined by the department and in addition ~~thereto~~ an excise and license tax as provided in this code.

(15) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(16) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(17) "Rules" means rules published by the department pursuant to this code.

(18) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(19) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor and table wine.

(20) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(21) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of ~~such~~ the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(22) "Table wine" means wine ~~as-defined-below-which~~ that contains not more than 16% alcohol by volume.

(23) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(24) "Warehouse" means a building or structure located in Montana owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(25) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable

federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined ~~as above~~ in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-2-101, MCA, is amended to read:

"**16-2-101. Establishment and closure of state liquor stores -- agency franchise agreement -- kinds and prices of liquor and table wine.** (1) (a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor and table wine in accordance with the provisions of this code and the rules ~~made thereunder~~ adopted under this code.

(b) The department shall enter into an agency franchise agreement or employ the necessary help to operate ~~said~~ the stores and shall designate the duties to be performed by the agent or employees.

(c) Once established, a store ~~shall~~ may not be closed, converted to an agency store, or sold by the department unless:

(i) the store is returning less than a 10% profit to the state; or

(ii) the closure or sale is approved by the legislature.

(2) The department may from time to time fix the prices

at which the various classes, varieties, and brands of liquor and table wine may be sold, and prices ~~shall~~ must be the same at all state stores.

(3) (a) State liquor stores must be considered for closure, conversion, or sale only when a store lease expires. Prior to the expiration of a lease, the department may conduct a financial profitability analysis using the criteria in subsection (1)(c)(i). In computing profit levels of state-operated stores, the costs of the licensing bureau and the legal and enforcement division, other than inspection costs directly attributable to liquor stores, may not be included as expenses. The revenue oversight committee must be informed of all plans for conversion, sale, or closure of state liquor stores.

(b) ~~No-agency~~ Agency stores ~~shall~~ may not be located in or adjacent to grocery stores in communities with populations over 3,000. This provision is applicable only to agency agreements entered into after May 11, 1987.

(4) Agency stores must receive commissions based on adjusted gross sales as follows:

(a) a 10% commission for agencies in communities with less than 3,000 in population;

(b) a commission established by competitive bidding for agencies in communities with 3,000 or more in population.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and may be renewed every 10 years if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement;

(c) require the agent to provide performance security in an amount equal to the average monthly value of inventory at cost based on the most recent 12-month period of inventory value at the agency store location or, if a 12-month history is not available, the department's estimate of the average value; and

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) The commission percentage that the department pays

the agent under an agency franchise agreement may be reviewed every 5 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(a) the agent's commission percentage is less than the average; and

(b) all the requirements of the agency franchise agreement have been satisfactorily performed.

(7) The liability insurance and performance security requirements may be reviewed every 5 years at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the loss of state assets or from the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of insurance coverage may not be less than the minimum requirements of the department of administration.

(8) An agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise

agreement. Except for establishing the new term, changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.

(9) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement or in the following cases:

(a) Except in the case of suspected theft or unauthorized use of state assets, the department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the agency franchise agreement termination and request a hearing within 30 days. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(b) If an agent is suspected of theft or unauthorized use of state assets, the department may terminate the agency franchise agreement and retrieve its assets immediately. If an agency franchise agreement is terminated, the agent may contest the agency franchise agreement termination and request a hearing within 30 days of the department's retrieval of assets. The agency store shall remain closed until a final decision has been reached following a hearing

held pursuant to the Montana Administrative Procedure Act.

(10) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(11) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(12) An agency agreement in effect on [the effective date of this act] must be converted upon request of the agent and approval of the department to a 10-year agency franchise agreement pursuant to subsections (5) through (11) without competitive bids or proposals.

~~(5)~~(13) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

Section 3. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, no a contract, lease, or rental agreement for supplies or services may not be made for a longer period than 3 years; however, the

department may contract for the lease or purchase of telecommunications equipment and systems, data processing equipment, the department of revenue liquor agencies, and the department of social and rehabilitation services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds ~~therefor~~ for the fiscal periods.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

NEW SECTION. **Section 4. Continuity of existing agency**

agreements. An existing agency agreement that terminates after [the effective date of this act] but before it is converted to an agency franchise agreement is automatically extended until an agency franchise agreement is signed or for 6 months from [the effective date of this act], whichever occurs first.

NEW SECTION. **Section 5. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 16, chapter 2, part 1, and the provisions of Title 16, chapter 2, part 1, apply to [section 4].

NEW SECTION. **Section 6. Applicability.** [This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act].

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0279, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing requirements for liquor agency store franchise agreements, providing procedures for agency franchise agreement termination effective on passage and applicable to agreements six months hence.

ASSUMPTIONS:

1. There is no fiscal impact as a result of this bill in either FY94 or FY95.

FISCAL IMPACT: None.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Under this legislation, the Department of Revenue or the liquor store agent can request a review and adjustment of the agency store commission percentage, at five-year intervals. This will result in a minimal fiscal impact over the long-run.

Dave Lewis 1-25-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Bob Gilbert 1-25-93

BOB GILBERT, PRIMARY SPONSOR DATE

Fiscal Note for HB0279, as introduced

HB 279

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0271	LARSON, DON 1/20	2/08	RECONCILE MONEY IN ALL VIDEO GAMBLING MACHINES TOGETHER	TABLED ON 02/08 VOTE: 18-0		
HB0272	RICE, JIM 1/20		DEPT. BILL WITH TECHNICAL GAMBLING LAW CHANGES	VOTE:	JUDICIARY	
HB0273	DOLEZAL, ED 1/20	2/09	PROHIBIT INSURER DIRECTING CAR OWNER TO SPECIFIED PLACE FOR GLASS REPAIRS	PASS AS AMENDED 2/15 VOTE: 18-0		2/17
HB0279	GILBERT, BOB 1/20	2/04	ESTABLISH AGENCY LIQUOR STORE FRANCHISE ACT	PASS AS AMENDED 2/4 VOTE: 18-0		2/08
HB0304	KASTEN, BETTY LOU 1/21	2/03	REVISING RESTRICTIONS ON COMPENSATION FOR INSURANCE CONSULTANTS	DO PASS 2/3 VOTE: 18-0		2/05
HB0305	KADAS, MIKE 1/21	2/02	EXEMPT LIMOUSINE SERVICE FROM SHOWING PUBLIC NEED	PASS AS AMENDED 2/4 VOTE: 10-8		2/05
HB0311	WINSLOW, KARYL 1/22	2/04	RESTRICT BARS WITHIN 2500 FEET OF HIGHWAY WITH 30% HIGHWAY CLIENTELE	TABLED ON 02/04 VOTE: 17-1		
HB0321	DOWELL, TIM 1/22	2/05	MOBILE HOME PARK RENTAL AGREEMENT REGULATION	TABLED ON 02/15 VOTE: 14-4		
HB0331	BROWN, DAVE 1/23		NO HEARING	TABLED ON 01/29 VOTE: 18-0		
HB0339	DRISCOLL, JERRY 1/25	2/03	EXEMPT PETROLEUM REFINERIES FROM BUILDING & ELECTRICAL CODES	PASS AS AMENDED 2/3 VOTE: 18-0		2/04
HB0349	RYAN, WILLIAM 1/25	2/08	NOT LET INSURER CONSIDER EMPLOYEE OFF-JOB DRIVING FOR EMPLOYER'S INSURANCE	DO PASS 2/8 VOTE: 11-7		2/09
HB0355	HARPER, HAL 1/26		REQUIRE POSTING OF PRICES OF 20 TOP-SELLING PRESCRIPTION DRUGS BY PHARMACY	VOTE:	HUMAN SERVICES	

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN STEVE BENEDICT, on February 4, 1993, at 8:00 A.M.

ROLL CALL

Members Present:
Rep. Steve Benedict, Chairman (R)
Rep. Sonny Hanson, Vice Chairman (R)
Rep. Bob Bachini (D)
Rep. Joe Barnett (R)
Rep. Ray Brandewie (R)
Rep. Vicki Cocchiarella (D)
Rep. Fritz Daily (D)
Rep. Tim Dowell (D)
Rep. Alvin Ellis (R)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Dick Knox (R)
Rep. Don Larson (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carley Tuss (R)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon, Legislative Council
Claudia Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 155, HB 279, AND HB 311
Executive Action: HB 155, HB 269, HB 279, HB 304, HB 305 AND HB 311

EXECUTIVE ACTION ON HB 269

Motion: REP. LARSON MOVED HB 269 DO PASS.

He said the PSC can turn anyone down if these people do not have all the other requirements.

REP. BRANDEWIE said the reason limousine service is regulated through the PSC, is because there is only so much business out there.

REP. BACHINI said HB 305 is not a good bill. He said if the regulation is taken away, there will be a lot of little businesses coming into the state without having to show need to receive a permit.

REP. ELLIS said he supports HB 305.

REP. LARSON said the limousine service is not a natural monopoly. He said there is a distinct difference between a need for the service and a desire for the service. He said the bill is on track and should be passed to take government out of regulation.

REP. SIMON said he is against HB 305. It is just another form of the government micro-managing a business that should not be involved in government.

REP. MILLS said he is in favor of HB 305.

REP. DAILY supports HB 305.

REP. BRANDEWIE moved to adopt an amendment proposed by **REP. KADAS**. The question was called. Voice vote was taken. Motion carried unanimously. **EXHIBIT 2**

REP. WAGNER moved to adopt an amendment on page 2, line 7, to change the number 9 to 13 passengers because of the stretch limos that are arriving in Montana. **REP. BRANDEWIE** called the question. Voice vote was taken. Motion carried unanimously.

Motion/Vote: **REP. COCCHIARELLA MOVED HB 305 DO PASS AS AMENDED.** **REP. MILLS** called the question. Roll call vote was taken. Motion carried 10 to 8 with **REPS. BRANDEWIE, HERRON, DOWELL, TUSS, PAVLOVICH, BACHINI, SIMON, WAGNER** voting no. **EXHIBIT 3**

Vote: **HB 305 DO PASS AS AMENDED.** Motion carried 10 - 8.

HEARING ON HB 279

Opening Statement by Sponsor:

REP. BOB GILBERT, House District 22, Sidney, said HB 279 is an act establishing forms for liquor agency store franchise agreements. He said currently the liquor store agencies operate under Title 18, which requires by law that every agreement be bid every three years, and is done by drawing a name out of a hat. He said the state has certain requirements of a liquor store operator, i.e., modification to the building, the size of the

building, etc. He said the new agreement in HB 279 will be effective for 10 years, and renewed every 10 years, if the requirements of the agency liquor store agreements are met. HB 279 will require the agent to maintain the comprehensive liability insurance, and the insurance and security required by the Department of Revenue. He said the department and the agent may get together during the middle of the 10-year agreement to discuss rates, insurance and security requirements. An agreement may be terminated by mutual agreement of both parties, or by the department if they find the agent in violation following a public hearing.

Proponents' Testimony:

Mike Grunow, representing the Montana Agency Liquor Store Association (MALSA), said that HB 279 will return the language back to the original way of handling the agency liquor stores. He urged the committee for a do pass recommendation. **EXHIBIT 4**

Tim Dalin, MALSA, East Helena Liquor Store, asked the committee to support HB 279.

Margaret Nelson, Victor Liquor Store, said HB 279 will save the department numerous costs in finding a new qualified agent, and will save the legislature time and money which can be spent on more important issues. **EXHIBIT 5**

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. HERRON asked **REP. GILBERT** in case of a death of an agent, is the store let out for re-bids or does it stay in the family? **REP. GILBERT** said an agent may assign an agency franchise agreement to a person upon approval of the department, and the department would be named the agent.

REP. LARSON asked **Gary Blewett, Bureau Chief of Liquor Division, Department of Revenue**, to explain about renegotiating commissions? **Mr. Blewett** said the way HB 279 is drafted, there are two issues that are to be renegotiated every five years: 1) commission rate; and 2) insurance conditions.

Closing by Sponsor:

REP. GILBERT said one of the most frequent questions asked is, what happens to existing agency stores? On page 10, (12), it says they can be converted. On page 11 and 12, it says an existing agency agreement terminates after the effective date of this act, or before it is converted into an agency liquor store it is automatically extended until the franchise agreement is signed for six months from the effective date. He said this bill

is for rural Montana. It is important to keep these businesses operating to keep the communities alive. He hoped the committee would find it in their power to pass HB 279.

HEARING ON HB 311

Opening Statement by Sponsor:

REP. KARYL WINSLOW, House District 97, Billings, said the purpose of HB 311 is to prohibit the issuance of retail liquor licenses to establishments within 2,500 feet of a state or federal highway if more than 30 percent of the alcoholic beverages to be consumed on the premises will be consumed by persons not residing within a 25-mile radius of the establishment. She said this approach is another way of dealing with the problems of drunk driving. She read her testimony. **EXHIBIT 6**

Proponents' Testimony:

Bill Fleiner, Board member of the Montana Sheriffs and Peace Officers Association, said the establishments that sit along the roads lessens the ability of an individual to be able to take advantage of those particular programs that promote the responsible use of alcohol, i.e., designated drivers, friends don't let friends drink and drive,

Opponents' Testimony:

Mark Staples, Montana Tavern Association, said HB 311 came about because of the Travel Lodge in Billings and a lack of responsiveness or accountability of a deliberative public body to the overwhelming opinion of a local area about a local proposal. He said the Travel Lodge case is still in the courts. HB 311 will move every place that serves liquor off the road to 2,500 feet, which is one-half mile. **Mr. Staples** said HB 311 came about because of good intent, but the practical application is out of the question. There is a grandfather clause to cover all of the places of businesses already in place.

Roger Tippy, Montana Beer and Wine Wholesalers Association, said the association tracks, month by month, the figures supplied by the Department of Revenue of the volume of beer and wine sold. He said it is clear that beer and wine sales will be double in June and July in comparison to January and February sales. The fluctuation of the tourists between the summer and winter months correlates to the total of beer and wine sold for those months. The best way to focus on the problem drinker is with HB 157, currently in the Judiciary Committee, which will take away a person's car on a third offense DUI.

REP. DON LARSON, House District 65, Seeley Lake, said HB 311 will grandfather about 1,600 licensees already in place along the

CHAIRMAN BENEDICT asked **Lorrie Merrick** what her opinion is on HB 155 with her being a no-ponent? **Ms. Merrick** said the Dental Hygienists' Association is neither a proponent nor an opponent of HB 155. If the denturists are allowed to leave the Board of Dentistry, the association would like the committee to consider the following: The Board of Dentistry is unique in that they are the only board that regulates both employers and their employees. She said the dentists licensed in Montana outnumber dental hygienists 2:1, but currently the representation on the board is 5:1. She proposed amendments which are listed in her written testimony. **EXHIBIT 20**

Closing by Sponsor:

REP. PAVLOVICH closed by informing the committee if HB 155 is passed out of committee, the sunrise law will be taken off. He offered an amendment which will strike the number of members on the board from five to four and insert one of the members must be a senior citizen. **EXHIBIT 21**

EXECUTIVE ACTION ON HB 311

Motion: **REP. PAVLOVICH MOVED HB 311 BE TABLED.**

Discussion: None

Motion/Vote: **REP. MILLS** called the question. Voice vote was taken. Motion carried 17 - 1 with **REP. LARSON** voting no.

Vote: **HB 311 BE TABLED.** Motion carried 17 - 1.

EXECUTIVE ACTION ON HB 279

Motion: **REP. PAVLOVICH MOVED HB 279 DO PASS.**

Discussion: **REP. HERRON** wanted to know if an agent passed away during the middle of the 10-year contract with the state would his/her widow be able to continue the contract until the 10-year contract is up? **REP. LARSON** replied that an agent's estate may transfer the license with the approval of the department.

REP. MILLS said he had a problem with continued renewability after every 10 years. He wanted to know how the state will ever receive a higher bid? **CHAIRMAN BENEDICT** said the department has the opportunity to review the agents every five years to re-negotiate.

REP. SIMON said he was concerned with the 10-year contracts. He felt the department should re-negotiate every five years to alter the agreement and change the agent's commissions.

REP. BRANDEWIE said after the 10-year contract, the department does not have to agree to anything the agent does.

REP. ELLIS moved to adopt a conceptual amendment. He would like the amendment to say that an agent would have the opportunity to meet any competitive bid after their first 10-year contract was up with the liquor agency. **EXHIBIT 22**

The question was called. Voice vote was taken. Motion carried 13 - 5 with **REPS. STELLA JEAN HANSEN, PAVLOVICH, DAILY, DOWELL AND SONNY HANSON** voting no.

Motion/Vote: **REP. DAILY MOVED HB 279 DO PASS AS AMENDED.** Voice vote was taken. Motion carried unanimously.

Vote: **HB 279 DO PASS AS AMENDED.** Motion carried 18 - 0.

ADJOURNMENT

Adjournment: 10:35 A.M.

STEVE BENEDICT, Chairman

CLAUDIA JOHNSON, Secretary

SB/cj

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL DATE 2-4-93

NAME	PRESENT	ABSENT	EXCUSED
REP. ALVIN ELLIS	✓		
REP. DICK KNOX	✓		
REP. NORM MILLS	✓		
REP. JOE BARNETT	✓		
REP. RAY BRANDEWIE	✓		
REP. JACK HERRON	✓		
REP. TIM DOWELL	✓		
REP. CARLEY TUSS	✓		
REP. STELLA JEAN HANSEN	✓		
REP. BOB PAVLOVICH	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRITZ DAILY	✓		
REP. BOB BACHINI	✓		
REP. DON LARSON	✓		
REP. BRUCE SIMON	✓		
REP. DOUG WAGNER	✓		
REP. SONNY HANSON, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT, CHAIRMAN	✓		

HR:1993
wp.rollcall.man

HOUSE STANDING COMMITTEE REPORT

February 5, 1993

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 279 (first reading copy -- white) do pass as amended .

Signed: _____
Steve Benedict, Chair

And, that such amendments read:

1. Page 8, line 23.
Strike: "An"
Insert: "(a) Except as provided in subsection (8)(b), an"

2. Page 9, line 1.
Following: "term"
Insert: "and except for a commission percentage that may be negotiated as provided in subsection (8)(b)"

3. Page 9, line 5.
Following: line 4
Insert: "(b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the department shall notify the agent of that determination.

(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.

(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (8)(b)(i), the department shall enter into an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.

Committee Vote:

(e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the adjusted commission percentage is inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate."

-END-

EXHIBIT 4
DATE 2-4-93
HB 279

Members, House Business Committee
Montana Legislature
Capital Station
Helena, Montana 59620

RE: HB 279; Establishing Agency Franchise system:

Dear Committee member:

My name is Mike Grunow and I have been the agent in LoLo, Montana for the past 14 years. I also represent the MONTANA AGENCY LIQUOR STORE ASSOCIATION. [MALSA]

I would like to urge you to lend your support for HB279, sponsored by Representative Bob Gilbert, for several important reasons.

1. This bill will define the Agency System for we agents and give us the ability to plan for the future and amortize our investments without the agony and uncertainty we have experienced in the past few years and legislative sessions.
2. It will have no affect on the Montana Tavern Association or the current quota system.
3. It will have no affect on the state liquor store employees or the state-run liquor stores.
4. HB279 will clarify the Agency Liquor System and provide protection for the State of Montana in the areas of liability and bonding.

As you all are aware, the Montana Legislature has repeatedly mandated, by wide margins, that privatization of the liquor business in Montana does not serve the best interests of this state. Also, the liquor agents in this state have made large investments and provided many jobs in our communities, and all of this has been based on the "good faith" of the State of Montana and the legislature. I feel that it is now time to support and pass HB279 inorder to define and clarify our Agency System, for the sake of all of the agents, as-well-as the State of Montana.

Very Sincerely,

Mike Grunow, Agent
LoLo Agency Liquor Store
LoLo, Montana 59847

EXHIBIT 5
DATE 2-4-93
HB 279

Mr. Taxation Committee Chairman & members of the committee:

I am Margaret Nelson agent for State Liquor Agency, #172, located in Victor.

I am a PROPONENT to HB279 for the following reasons:

The Agency Franchise Agreement is designed to be advantagous to the State of Montana, in that contracts will be for a period of 10 years and renewed every 10 years thereafter if the requirements of the agency franchise agreement have been performed satisfactorily, thus;

#1. Saving the Department of Revenue numerous costs in finding a new qualified agent.

#2. Saving the legislature time and money which can be well spent on more important issues.

-Year after year the subject of privitization is brought up.

-This bill is designed to relieve the Department of Revenue, Liquor Division of further responsibility to the tax payers of the State of Montana and to continue the state in a program, which has proved to make money for the State of Montana, at a minimal cost.

-Net income to the State of Montana has been over $4, mil. the past few years. This does not include excise taxes, license taxes, beer & wine taxes for an additional revenue income of almost $14, mil.

Respectively submitted,

Margaret Nelson
P.O. Box 670
Victor, MT. 59875
642-3805

The Law Library was not provided with an Exhibit 22 for Feb 4, 1993.

22

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Business & Ec. COMMITTEE BILL NO. HB 279

DATE Feb. 4, 1993 SPONSOR(S) B. Gilbert

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
W. D. Hill Helena	B & W Hill Inc	✓	
MIKE GRUNDON	MALSA	✓	
Mark Kokoulat	MALSA	✓	
Margaret Nelson	MALSA - Self	✓	
Tim DALIN	MALSA	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

CHAIRMAN--MIKE HALLIGAN
NORMAL SCHEDULE==> SITE: RM 413/415 DAYS: M,T,W,T,F TIME: 8:00 A.M.

SECRETARY-BONNIE STARK

--BILL NO--	--REFER DATE--	--HEARING DATE--	--CONSIDERATION DATES--	--COMMITTEE ACTION--	--REREFERRED TO COMM--	--DATE OUT-
HB0193	3/12		4/2/93	CONCUR AS AMENDED		4/03
TUSS, CARLEY			MONTANA PRODUCE ACT			
HB0196	3/01	3/23	4/2/93	CONCUR		4/03
DRISCOLL, JERRY			CAP THE AMOUNT OF REIMBURSEMENT PAID TO ELIGIBLE TAXING JURISDICTIONS			
HB0219	4/01	4/05	4/5/93	CONCUR AS AMENDED		4/06
GILBERT, BOB			TAX CREDIT FOR ALTERNATIVE FUELS -- VEHICLE CONVERSION			
HB0250	2/04	2/16	2/16/93	CONCUR		3/02
REAM, BOB			AMENDING DOR PROPERTY TAX REVIEW AND COUNTY AND STATE TAX APPEAL PROCESS			
HB0269	2/12	3/04	3/4/93	CONCUR		3/05
LARSON, DON			GAMBLING MACHINE PERMIT GOOD FOR ENTIRE YEAR IF OPERATOR CHANGES			
HB0279	2/16	3/16	3/16/93	CONCUR		3/16
GILBERT, BOB			ESTABLISH AGENCY LIQUOR STORE FRANCHISE ACT			
HB0283	2/11	2/17	3/23/93	CONCUR AS AMENDED		3/24
ELLIOTT, JIM			REVISE CIGARETTE TAX WITH EXEMPTION FOR TRIBAL MEMBERS			
HB0297	2/04	2/16	2/16/93	CONCUR		3/01
MCCARTHY, BEA			CLARIFY CAPITAL GAINS TREATMENT FOR ESTATES			
HB0298	2/04	2/16	2/16/93	CONCUR		3/02
BIRD, JODY			EXTEND APPEAL TIME FROM STAB INVOLVING INDIVIDUAL INCOME TAX			
HB0303	2/12	3/04	4/2/93	CONCUR AS AMENDED		4/03
RICE, SHEILA			PROVIDE TAX INCREMENT FINANCING FOR POLLUTION CONTROL FACILITY OR EQUIPMENT			
HB0312	2/04	2/16	2/16/93	CONCUR		3/02
FOSTER, MIKE			CLARIFYING COMMERCIAL USE OF BENEFICIAL USE TAX			

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Mike Halligan, on March 16, 1993, at 8:05 a.m.

ROLL CALL

Members Present:
Sen. Mike Halligan, Chair (D)
Sen. Dorothy Eck, Vice Chair (D)
Sen. Bob Brown (R)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John Harp (R)
Sen. Spook Stang (D)
Sen. Tom Towe (D)
Sen. Fred Van Valkenburg (D)
Sen. Bill Yellowtail (D)

Members Excused: Sen. Steve Doherty (D)

Members Absent: None.

Staff Present: Jeff Martin, Legislative Council
Bonnie Stark, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 279, HB 402, HB 490, HJR 3
Executive Action: HB 279, HB 402, HB 490, HJR 3

HEARING ON HB 402

Opening Statement by Sponsor:

Representative Bill Strizich, House District #41, presented HB 402, which is an act changing from 10 years to 5 years the time when personal property taxes may be cancelled if the County has exhausted all efforts to seize and sell the property, and clarifying that personal property taxes unpaid because of bankruptcy or other litigation need not be listed as uncollected. Rep. Strizich said his County Treasurer asked him to carry this bill, which has no fiscal impact on the General Fund. Rep. Strizich said that almost all collectable personal property taxes are paid within two to three years, either by payment or by seizure and sale.

Proponents' Testimony:

Cort Harrington, representing the Montana County Treasurer's Association (MCTA), said HB 402 was introduced at the request of MCTA. The MCTA doesn't think there is any need to carry delinquent personal property taxes on the tax rolls for 10 years; if these taxes can't be collected within 2 to 3 years, there is a good chance the property owners have left that County and there is no chance of collecting the tax. If the Treasurer cannot collect the tax within 5 years, there is probably something wrong. Mr. Harrington urged support of HB 402.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

In answer to questions by Senator Towe concerning the status of taxes uncollected at the end of the 5-year period, Mr. Harrington said that if the tax is not collected within the five year period, it is written off, and if the circumstances change, the tax is still not collectable. It is the view of the County Treasurers that if they haven't been able to find the taxpayers in five years, they probably aren't going to be able to find them. Also, if the assessment is on some type of equipment, it is difficult to prove that it is the same property the County assessed 8 or 9 years earlier.

Closing by Sponsor:

Senator Strizich encouraged support of HB 402.

HEARING ON HB 279

Opening Statement by Sponsor:

Rep. Bob Gilbert, House District #22, presented HB 279, which establishes requirements for liquor agency store franchise agreements. Rep. Gilbert said HB 279 will take the agency liquor stores out of Section 18 and move them into Section 16. In the last legislative session, a similar bill passed both houses but the bill had some other issues included and was vetoed by the Governor. HB 279 only deals with liquor stores, and allows for negotiation of a 10-year agency franchise agreement with the State Department of Revenue (DOR). Section 2 deals with establishing and closing agency franchise stores. Rep. Gilbert said the original bill read that the State couldn't stop the renewal of the agency franchise agreement until the agent

mutually agreed. The House amended the bill so that if the agent didn't agree with the negotiation and the rates, the store would be advertised for a franchise, and after the agreement was made by the people who responded to the advertisement, the current owner of the agency liquor store had the right to meet that new agreement. At present, every three years the liquor agency store has to re-negotiate an agreement with the State. The State requires an agency store to modify its building to meet State specifications. Presently, a person could put thousands of dollars into a building to meet State specs, and in three years the person could be replaced. Rep. Gilbert said it is hard to justify that kind of investment for a 3-year lease.

Proponents' Testimony:

Mike Grunow, representing the Montana Agency Liquor Store Association (MALSA), who is also an agent in Lolo, spoke in favor of HB 279. Mr. Grunow said this past year there have been some problems in the agency liquor system and he believes HB 279 will take care of those problems. He said this bill will serve to clarify the agency liquor system, it doesn't have any affect on the Montana Tavern Association, it has no affect on the current quota system Montana has established, and it will give the agent/owner/operator the ability to amortize his investment and plan for his future and not have to re-bid his store every three years. Equally as important, according to Mr. Grunow, it doesn't preclude the State from at some point in the future potentially looking at privatization of the liquor issue. He asked that this bill be supported.

Willard Hill, the agent at the Ronan Store 101, spoke in favor of HB 279, saying he supports the longer terms so an owner can do some kind of planning. Mr. Hill said it is hard to find good employees and keep them when an owner doesn't know from day to day if he will have a store or not. He asks support of HB 279.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Eck asked Gary Blewett, Administrator of the DOR Liquor Division, for his assessment of HB 279. Mr. Blewett said he finds no problem whatsoever with this bill. He thinks it does iron out some problems that the Liquor Division had in the past regarding re-contracting every three years. Mr. Blewett said HB 279 will further better management of the liquor agency system.

Closing by Sponsor:

Rep. Gilbert said HB 279 will have a positive impact on rural communities, and the longevity is needed because most often the liquor agency business is part of another existing business and if the liquor agency business should go out, the other business could be jeopardized. Rep. Gilbert recommends the bill and asks committee support.

HEARING ON HJR 3

Opening Statement by Sponsor:

Rep. Bob Gilbert, House District #22, presented HJR 3, which is the Revenue Oversight Committee's (ROC) income projection for the State of Montana. Rep. Gilbert turned the presentation over to Terry Johnson.

Informational Testimony:

Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Analyst's Office (LFA), presented Exhibit No. 1 to these minutes, which is entitled, "Major Economic Assumptions For The 1995 Biennium". Mr. Johnson explained this exhibit is a summarization of the economic assumptions as adopted by the Revenue Oversight Committee on January 5, 1993. Since the adoption of those assumptions, HJR 3 was introduced and passed the House. There is one adjustment which will not affect any of the underlying economic assumptions but it did change the anticipated revenue for the General Fund category called "All Other Revenue". The Department of State Lands indicated to the LFA they would receive an additional $400,000 revenue due to a Federal reimbursement for fires. This amount is included in the HJR 3 bill; however, it does not show in Exhibit No. 1.

Questions From Committee Members and Responses:

Mr. Johnson answered questions from the committee as he reviewed the estimates listed in Exhibit No. 1.

In response to questions by Senator Towe, Mr. Johnson said the Other Revenue Sources line item on the General Fund Revenue Estimates chart should read $21.483 (million) in FY 1993.

Senator Harp questioned the pie chart which shows the Foundation Program Revenue income changing from 24.1% in FY 92-93 to 26.8% in FY 94-95. Mr. Johnson said the portion of the income tax going to the School Equalization Account (SEA) in 1994-95 has been changed to 31.8%, so a larger percentage of the total income tax is being deposited into that account. Unless there are further changes, that percentage is fixed. Mr. Johnson said in terms of the need in the SEA account, if there is inadequate revenue available, there is a General Fund supplement to make up

EXECUTIVE ACTION ON HB 490

MOTION/VOTE:

Senator Stang moved HB 490 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote (591154SC.Sma). Senator Stang will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 279

DISCUSSION:

Senator Towe commented about the administrative hearing process listed on Page 10 where there is no reference to hearing decisions according to the Montana Administrative Procedure Act (MAPA), and on Page 11 where the bill twice refers to hearing decisions according to MAPA, and asked why a hearing would not be held subject to MAPA. Mr. Salisbury said in one instance a franchise would be taken away; in another instance, where the DOR is asking for a higher rate, they could request a hearing.

Senator Towe noted the time limit for holding the hearing is not provided in HB 279. He thinks if MAPA rules apply, it should say so in HB 279.

MOTION/VOTE:

Senator Towe moved HB 279 BE CONCURRED IN. The motion CARRIED on oral vote (591152SC.Sma). Senator Stang did not vote because of a conflict of interest. Senator Swysgood will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 402

DISCUSSION:

Senator Towe does not believe it should be mandatory that the County must charge off uncollected personal property taxes if there is a possibility the property might come back on the rolls. He thinks there should be some flexibility. He suggested taking out the word "not" on Line 2, and "because of" on Line 3, Page 2, of HB 402, and insert "notwithstanding" before "bankruptcy" on Line 3, Page 2, and add "or having been delinquent for five years if collection remains likely or probable" after "litigation" on Line 3, Page 2.

Senator Gage noted that the title of HB 402 reads, "If the county has exhausted all efforts to seize and sell the property", which language doesn't appear in the body of the bill. Senator Gage stated if this language were to be placed in the bill, he doesn't think it would be necessary for the amendments suggested by Senator Towe. Senator Towe agreed that if they have exhausted

ROLL CALL

SENATE COMMITTEE TAXATION DATE 3-16-93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Halligan, Chair	✓		
Sen. Eck, Vice Chair	✓		
Sen. Brown	✓		
Sen. Doherty			✓
Sen. Gage	✓		
Sen. Grosfield	✓		
Sen. Harp	✓		
Sen. Stang	✓		
Sen. Towe	✓		
Sen. Van Valkenburg	✓		
Sen. Yellowtail	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

March 16, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 279 (first reading copy -- blue), respectfully report that House Bill No. 279 be concurred in.

Signed: _____
Senator Mike Halligan, Chair

m — Amd. Coord.
m Sec. of Senate

Swysgood
Senator Carrying Bill

591152SC.Sma

DATE 3-16-93

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: HB 279, 402, 490 HJR 3

Name	Representing	Bill No.	Check One: Support	Oppose
M. D. Hill	STORE 101	279	✓	
Bill Salisbury	MDT	HB490	✓	
MIKE GRUNOW	MALSA	279	✓	
Tim DALIN	MALSA	279	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F1C

HOUSE BILL NO. 279

INTRODUCED BY GILBERT, HARRINGTON, FOSTER,

MCCAFFREE, SWYSGOOD, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING REQUIREMENTS FOR LIQUOR AGENCY STORE FRANCHISE AGREEMENTS; PROVIDING PROCEDURES FOR AGENCY FRANCHISE AGREEMENT TERMINATION; AMENDING SECTIONS 16-1-106, 16-2-101, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Beer importer" means a person other than a brewer who imports malt beverages.

(6) "Brewer" means a person who produces malt beverages.

(7) "Department" means the department of revenue.

(8) "Immediate family" means a spouse, dependent children, or dependent parents.

(9) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(10) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(11) "Liquor" means an alcoholic beverage except beer and table wine.

(12) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom from carbohydrates and with or without other wholesome products suitable for human food consumption.

(13) "Package" means a container or receptacle used for

holding an alcoholic beverage.

(14) "Posted price" means the retail price of liquor and table wine as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(15) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(16) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(17) "Rules" means rules published by the department pursuant to this code.

(18) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(19) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor and table wine.

(20) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer

may sell or distribute beer as permitted by this code.

(21) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of such the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(22) "Table wine" means wine ~~as-defined-below-which~~ that contains not more than 16% alcohol by volume.

(23) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(24) "Warehouse" means a building or structure located in Montana owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(25) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies,

sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-2-101, MCA, is amended to read:

"16-2-101. Establishment and closure of state liquor stores -- agency franchise agreement -- kinds and prices of liquor and table wine. (1) (a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor and table wine in accordance with the provisions of this code and the rules made thereunder adopted under this code.

(b) The department shall enter into an agency franchise agreement or employ the necessary help to operate said the stores and shall designate the duties to be performed by the agent or employees.

(c) Once established, a store shall may not be closed, converted to an agency store, or sold by the department unless:

(i) the store is returning less than a 10% profit to the state; or

(ii) the closure or sale is approved by the legislature.

(2) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor and table wine may be sold, and prices shall must be the same at all state stores.

(3) (a) State liquor stores must be considered for closure, conversion, or sale only when a store lease expires. Prior to the expiration of a lease, the department may conduct a financial profitability analysis using the criteria in subsection (1)(c)(i). In computing profit levels of state-operated stores, the costs of the licensing bureau and the legal and enforcement division, other than inspection costs directly attributable to liquor stores, may not be included as expenses. The revenue oversight committee must be informed of all plans for conversion, sale, or closure of state liquor stores.

(b) No agency Agency stores shall may not be located in or adjacent to grocery stores in communities with populations over 3,000. This provision is applicable only to agency agreements entered into after May 11, 1987.

(4) Agency stores must receive commissions based on adjusted gross sales as follows:

(a) a 10% commission for agencies in communities with less than 3,000 in population;

(b) a commission established by competitive bidding for agencies in communities with 3,000 or more in population.

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(5) An agency franchise agreement must:

(a) be effective for a 10-year period and may be renewed every 10 years if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement;

(c) require the agent to provide performance security in an amount equal to the average monthly value of inventory at cost based on the most recent 12-month period of inventory value at the agency store location or, if a 12-month history is not available, the department's estimate of the average value; and

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) The commission percentage that the department pays the agent under an agency franchise agreement may be reviewed every 5 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(a) the agent's commission percentage is less than the average; and

(b) all the requirements of the agency franchise agreement have been satisfactorily performed.

(7) The liability insurance and performance security requirements may be reviewed every 5 years at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the loss of state assets or from the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of insurance coverage may not be less than the minimum requirements of the department of administration.

(8) An (A) EXCEPT AS PROVIDED IN SUBSECTION (8)(B), AN agency franchise agreement must be renewed for additional

10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term AND EXCEPT FOR A COMMISSION PERCENTAGE THAT MAY BE NEGOTIATED AS PROVIDED IN SUBSECTION (8)(B), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.

(B) IF AT LEAST 90 DAYS PRIOR TO THE EXPIRATION OF A 10-YEAR AGENCY FRANCHISE AGREEMENT, THE DEPARTMENT DETERMINES THAT AN ADJUSTMENT OF THE COMMISSION PERCENTAGE PAID TO THE AGENT IS IN THE BEST INTERESTS OF THE STATE, THE DEPARTMENT SHALL NOTIFY THE AGENT OF THAT DETERMINATION.

(C) IF THE AGENT DOES NOT CONCUR WITH THE DEPARTMENT'S COMMISSION PERCENTAGE ADJUSTMENT, THE DEPARTMENT SHALL ADVERTISE FOR BIDS FOR THE AGENCY FRANCHISE AT THE ADJUSTED COMMISSION PERCENTAGE, SUBJECT TO THE PROVISIONS OF THIS CHAPTER. IF BIDS FROM PERSONS WHO MEET THE CRITERIA PROVIDED IN THIS CHAPTER ARE RECEIVED BY THE DEPARTMENT FOR THE AGENCY FRANCHISE AT THE ADJUSTED COMMISSION PERCENTAGE, THE AGENT UNDER THE EXISTING FRANCHISE AGREEMENT HAS A PREFERENCE RIGHT TO RENEW THE FRANCHISE AGREEMENT BY CONCURRING IN THE ADJUSTED COMMISSION PERCENTAGE.

(D) IF THE AGENT UNDER THE EXISTING FRANCHISE AGREEMENT DECLINES TO EXERCISE THE PREFERENCE RIGHT UNDER SUBSECTION (8)(C), THE DEPARTMENT SHALL ENTER INTO AN AGENCY FRANCHISE

AGREEMENT AS PROVIDED IN THIS CHAPTER WITH A PERSON WHO ACCEPTED THE ADJUSTED COMMISSION PERCENTAGE.

(E) IF THE AGENT EXERCISES THE PREFERENCE RIGHT AND BELIEVES THE ADJUSTED COMMISSION PERCENTAGE TO BE INADEQUATE OR NOT IN THE BEST INTERESTS OF THE STATE, THE AGENT MAY REQUEST AN ADMINISTRATIVE HEARING. THE REQUEST MUST CONTAIN A STATEMENT OF REASONS WHY THE AGENT BELIEVES THE COMMISSION PERCENTAGE TO BE INADEQUATE OR NOT IN THE STATE'S BEST INTERESTS. THE DEPARTMENT SHALL GRANT THE REQUEST FOR A HEARING IF IT DETERMINES THAT THE STATEMENT INDICATES EVIDENCE THAT THE ADJUSTED COMMISSION PERCENTAGE IS INADEQUATE OR NOT IN THE STATE'S BEST INTERESTS. THE DEPARTMENT MAY, AFTER THE HEARING, ADJUST THE COMMISSION PERCENTAGE IF THE AGENT SHOWS THAT THE COMMISSION PERCENTAGE IS INADEQUATE OR NOT IN THE BEST INTERESTS OF THE STATE. IF THE DEPARTMENT INCREASES THE COMMISSION PERCENTAGE RATE, THE DEPARTMENT SHALL SET FORTH ITS FINDINGS AND CONCLUSIONS IN WRITING AND INFORM THE AGENT AND THE OTHER PERSONS WHO OFFERED TO ENTER INTO AN AGENCY AGREEMENT AT THE ADJUSTED COMMISSION RATE.

(9) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement or in the following cases:

(a) Except in the case of suspected theft or

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unauthorized use of state assets, the department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the agency franchise agreement termination and request a hearing within 30 days. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(b) If an agent is suspected of theft or unauthorized use of state assets, the department may terminate the agency franchise agreement and retrieve its assets immediately. If an agency franchise agreement is terminated, the agent may contest the agency franchise agreement termination and request a hearing within 30 days of the department's retrieval of assets. The agency store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(10) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(11) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the

agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(12) An agency agreement in effect on [the effective date of this act] must be converted upon request of the agent and approval of the department to a 10-year agency franchise agreement pursuant to subsections (5) through (11) without competitive bids or proposals.

~~(5)~~(13) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

Section 3. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, no a contract, lease, or rental agreement for supplies or services may not be made for a longer period than 3 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems, data processing equipment, the department of revenue liquor agencies, and the department of social and rehabilitation services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the

solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds therefor for the fiscal periods.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

NEW SECTION. **Section 4.** Continuity of existing agency agreements. An existing agency agreement that terminates after [the effective date of this act] but before it is converted to an agency franchise agreement is automatically extended until an agency franchise agreement is signed or for 6 months from [the effective date of this act], whichever occurs first.

NEW SECTION. **Section 5.** Codification instruction. [Section 4] is intended to be codified as an integral part of Title 16, chapter 2, part 1, and the provisions of Title

16, chapter 2, part 1, apply to [section 4].

NEW SECTION. **Section 6.** Applicability. [This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act].

NEW SECTION. **Section 7.** Effective date. [This act] is effective on passage and approval.

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